



U.S. Department of Justice

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October 14, 2024

BY ECF & EMAIL

The Honorable Cathy Seibel
United States District Judge
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

Re: *United States v. Frank Butselaar, S1 22 Cr. 560 (CS)*

Dear Judge Seibel:

The Government writes to respectfully request that the Court set certain defense deadlines and order that certain filings—which will form the basis of the Court’s evidentiary rulings—be made available to the Government.

The defendant has repeatedly asserted that he intends to put on a defense case. To date, and despite multiple requests beginning as early as January 18, 2024, the Government has not received any reciprocal discovery. *United States v. Smith*, 985 F. Supp. 2d 506, 522 (S.D.N.Y. 2013) (“Rule 16 also imposes reciprocal discovery obligations on defendants.”). Thus, the Government respectfully requests that the Court set a deadline, as discussed further below, for any material to be produced pursuant to Rule 16(b)(1). See, e.g., *United States v. Lobo*, No. 15 CR. 174 (LGS), 2017 WL 1102660, at *5 (S.D.N.Y. Mar. 22, 2017) (setting Rule 16 deadline for defense); see also *United States v. Estremera*, 531 F.2d 1103, 1113 (2d Cir. 1976) (“The government’s voluntary turnover of desired material to defendant must be deemed to have been based upon the implied condition that the defense would reciprocate, if necessary, at a later date.”). In addition, the Court should also set a deadline for production of defense exhibits and Rule 26.2

statements. This disclosure is particularly necessary here to avoid unwarranted mid-trial motion practice and delay given the fraught issues around a potential “presence of professionals” defense.

The Government respectfully requests that the Court order the below schedule for defense disclosures. The Government has conferred with the defense and they take no position on the proposed schedule outside of noting that they believe it is premature.¹

- Reciprocal Discovery pursuant to Fed. R. Crim. P. 16(b)(1): October 21
- Marked Defense Exhibits: October 28
- Rule 26.2 Statements: October 28

Relatedly, the Government respectfully requests that the Court order certain filings made by the defense be made available to the Government. As the court is well aware, the Government sought information regarding the defendant’s purported presence of professionals defense and moved to keep the 2013 Client-2 Audit out. In response, the Court ordered further information on these topics from the defense to rule on the Government’s motions. That resulted in an *ex parte* filing the defense made, unilaterally, on October 11. The Court ordered further information to be disclosed by the defense, again, to resolve the Government’s motions, on October 17.

The October 11 and impending October 17 filing will form the basis of significant evidentiary rulings by the Court which were prompted by the Government’s motions. Thus, the Government respectfully requests that the Court order the defense to provide these filings to the Government so that the Government may (1) adequately prepare to argue these issues at the Final Pretrial Conference on October 21, (2) appropriately request relief—*e.g.*, a limiting instruction and possibly a jury instruction—if the Court is inclined to allow introduction of evidence or argument regarding the presence of professionals, and (3) seek and prepare relevant IRS witnesses if the Court is inclined to let in portions of the 2013 Client-2 Audit. At base, keeping the defense filings—

¹ The defense also represents that they presently have no responsive material to turn over.

responsive to the Government's motions—*ex parte* is completely unwarranted and may result in further, unnecessary *in limine* litigation as a result of the Government being kept in the dark.

Respectfully submitted,

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